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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HIROYUKI SUMI and TOSHIKAZU KOBAYASHI

Appeal 2010-000525
Application 10/728,334
Technology Center 1700

Decided: May 24, 2010

Before EDWARD C. KIMLIN, ADRIENE LEPIANE HANLON, and
CHARLES F. WARREN, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-16. We have jurisdiction under 35 U.S.C. § 6(b).

Claim 1 is illustrative:

1. A flame resistant, laser weldable polyester resin composition, comprising:

- (A) 10 to 90 weight percent thermoplastic polyester;
- (B) 1 to 35 weight percent phosphorus containing flame retardant;
- (C) 1 to 25 weight percent phenolic polymer; and
- (D) 1 to 25 weight percent thermoplastic acrylic polymer;

the above stated percentages being based on the total weight of the components A-D.

The Examiner relies upon the following references as evidence of obviousness (Ans. 3):

Takahashi	4,742,109	May 03, 1988
Harashina	WO 01/48086	July 05, 2001

Appellants' claimed invention is directed to a flame resistant resin composition comprising a thermoplastic polyester, a phosphorus containing flame retardant, a phenolic polymer and a thermoplastic acrylic polymer. The composition is laser weldable.

Appealed claims 1-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Harashina in view of Takahashi

Appellants do not present separate arguments for any particular claim on appeal. Accordingly, all the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in complete agreement with the Examiner's reasoned analysis and application of the prior art, as well the Examiner's cogent and thorough disposition of the arguments raised by Appellants.

Accordingly, we will adopt the Examiner's reasoning as our own in sustaining the rejection of record, and we add the following for emphasis only.

There is no dispute that Harashina, like Appellants, discloses a flame retardant resin composition comprising a thermoplastic polyester, a phosphorous containing flame retardant and a phenolic polymer in the claimed amounts. The resin compositions of Harashina do not contain the claimed thermoplastic acrylic polymer. However, Appellants have not contested the Examiner's finding that Takahashi discloses a flame retardant composition comprising a thermoplastic polyester and a thermoplastic acrylic polymer for the purpose of overcoming a decrease in the impact resistance of the composition due to the presence of the flame retardant. Accordingly, based on the collective teachings of Harashina and Takahashi, we find no error in the Examiner's legal conclusion that

it would have been obvious for one of ordinary skill in the art at the time the invention was made to include at least 0.1 to 20 % by wt. of polyacrylate resin in the polyester resin compositions disclosed by Harashina et al. and thereby arrive at the presently cited claims.

(Ans. 5, first para.). Appellants have not presented any reason why one of ordinary skill in the art would have been dissuaded from adding the thermoplastic acrylic polymer of Takahashi to the flame retardant composition of Harashina in order to maintain the impact resistance of the Harashina composition. Nor have Appellants presented any objective evidence which demonstrates that flame retardant compositions within the scope of the appealed claims produce unexpected results.

Appellants maintain that “the compositions of the present invention possess a unique combination of properties in that they are simultaneously flame retardant, laser weldable, and have good impact resistance” (Br. 9, last para.). Appellants contend that no hint is given in the disclosures of Harashina and Takahashi that the combination of the claimed components “would have this highly desirable and difficult to attain combination of properties” (Br. 10, second full para.). However, as pointed out by the Examiner, it is not necessary for a conclusion of obviousness that the prior art appreciate all the advantages associated with a claimed composition. The obviousness of the claimed composition is predicated upon the rationale that one of ordinary skill in the art would have found it obvious to include the thermoplastic acrylic polymer in the composition of Harashina to maintain its impact resistance.

Appellants cite Example 3 and Comparative Examples 3 and 4 of the present Specification to show that “the use of traditional halogenated flame retardant systems leads to compositions that are not laser weldable” (Br. 10, first full para.). However, the relevancy of this comparative data is not apparent inasmuch as both of the applied references disclose polyester resin compositions comprising the claimed phosphorus containing flame retardants. Appellants have not presented objective evidence which establishes that compositions within the scope of the appealed claims produce unexpected results.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner’s decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (2008).

AFFIRMED

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